

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ELIZABETH KERWIN, Regional
Director of Region 7 of the National
Labor Relations Board, for and on
behalf of the NATIONAL LABOR
RELATIONS BOARD,

Petitioner,

v.

STARBUCKS CORPORATION,

Respondent.

Case No. 2:22-cv-12761

HON. MARK A. GOLDSMITH

**RESPONDENT’S RESPONSE TO PETITIONER’S AUGUST 23, 2023
NOTICE TO THE COURT**

Respondent Starbucks Corporation (“Starbucks”), through its undersigned counsel, submits its response to the August 23, 2023 Notice with the Court filed by Petitioner Elizabeth Kerwin, Regional Director of Region 7 of the National Labor Relations Board (“Petitioner”). (Dkt. 48). As discussed in further detail below, Starbucks respectfully submits that it is not opposed to Petitioner’s request that the Court dissolve the injunction entered by it on February 23, 2023.

1. On November 15, 2022, Petitioner filed a petition with the Court seeking the entry of an injunction pursuant to Section 10(j) of the National Labor Relations Act. (Dkt. 1).

2. On February 23, 2023, the Court entered an Opinion and Order granting in part and denying in part the Petitioner's request for extraordinary relief under Section 10(j). (*See* Dkt. 35, 36).

3. On February 28, 2023, Starbucks filed its Notice of Appeal, (Dkt. 37), informing the Court that Starbucks was appealing the Court's Opinion and Order entering an injunction in this matter. Starbucks' appeal of the Court's Opinion and Order has been docketed as *Elizabeth Kerwin v. Starbucks Corp.*, Case No. 23-1187 and is currently pending a decision on the merits from the Sixth Circuit Court of Appeals.

4. On August 23, 2023, Petitioner filed the instant Notice to the Court, (Dkt. 48), requesting that the Court terminate the February 23, 2023 injunction entered in this matter because the Court's Order terminated by operation of law on August 9, 2023 after the National Labor Relations Board ("NLRB" or the "Board") issued a final administrative decision as to NLRB Case Nos. 07-CA-292971 and 07-CA-293916, which were the underlying administrative proceedings serving as the basis for the Section 10(j) relief requested by Petitioner. A copy of the NLRB's August 9, 2023 administrative decision is attached hereto as **Exhibit A**.

5. Starbucks respectfully submits that it continues to believe that the Court's February 23, 2023 Order was inappropriate because, among other things, the Court's Order and Opinion was not supported by the evidence and the Court applied

Sixth Circuit precedent for “just and proper” relief under Section 10(j) that has no basis in the plain language of the NLRA and is contrary to the U.S. Supreme Court’s holding in *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008). To the extent Petitioner suggests otherwise, Starbucks contends that the Board’s final decision in an underlying administrative proceeding does not on its own render moot the appeal of a district court’s decision to grant relief under Section 10(j). *See, e.g., Miller v. Cal. Pacific Med. Ctr.*, 19 F.3d 449, 454 (9th Cir. 1994) (finding Section 10(j) appeal not moot despite Board’s final decision in the underlying administrative proceeding where the issue on appeal involved the appropriate standard to be used when determining the propriety of relief under Section 10(j) which fell within the “capable of repetition yet evading review” exception to Article III’s case-and-controversy requirement). And, as noted in ¶ 3, the Sixth Circuit has not yet to rule on the merits of Starbucks’ appeal.

6. Nonetheless, Starbucks does not oppose the Petitioner’s request that the Court dissolve the February 23, 2023, and notes that it has complied with the Court’s February 23, 2023 Order. (*See* Dkt. 44, 46).

WHEREFORE, Respondent Starbucks Corporation respectfully submits that it is not opposed to Petitioner Elizabeth Kerwin’s request that the Court dissolve its February 23, 2023 injunction.

Respectfully submitted,

/s/Neil B. Pioch

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been electronically filed with the Clerk of the Court by using the CM/ECF system, which will in turn send a notice of the electronic filing to all counsel of record, on this 25th day of August 2023.

/s/Neil B. Pioch